

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES,

Plaintiff,

v.

DAVID E. TORGERSON,

Defendant.

Case No. 2:18-cv-00656

District Judge
Magistrate Judge

COMPLAINT

With the authorization of the Secretary of the Treasury and at the direction of the Attorney General, both under 26 U.S.C. § 7401, the United States brings this civil action for a judgment finding DAVID TORGERSON liable for certain internal revenue taxes, plus penalties and statutory additions, and enforcing the associated federal tax liens against certain property belonging to MR. TORGERSON. Specifically, the United States alleges as follows:

Subject Matter Jurisdiction

1. Jurisdiction over this action is conferred upon the United States District Court by 28 U.S.C. §§ 1331, 1340, 1345 and 26 U.S.C. §§ 7402.

Venue

2. Venue is proper under 28 U.S.C. §§ 1391(b), 1396 because, inter alia, Westerville, Ohio.

Count I: Assessments

3. Pursuant to 26 U.S.C. §§ 6201, 6203, a delegate of the Secretary of the Treasury assessed DAVID TORGERSON with the liabilities in the following table on account of which a balance remains as of April 30, 2018, including interest and other statutory additions, totaling \$661,532.10:

INCOME TAX FOR YEAR ENDING DECEMBER 31, 2005		
Assessment Date	Assessment Type	Assessment Amount
07-07-08	Tax per audit.	\$310,081.00
07-07-08	Penalty for failure to file accurate return. I.R.C. § 6662.	\$62,016.00
05-09-11	Penalty for failure to pay tax per audit. I.R.C. § 6651(a)(2)-(3).	\$95,708.68

4. Pursuant to 26 U.S.C. §§ 6201, 6203, a delegate of the Secretary of the Treasury assessed DAVID TORGERSON with the liabilities in the following table on account of which a balance remains as of April 30, 2018, including interest and other statutory additions, totaling \$127,797.72:

INCOME TAX FOR YEAR ENDING DECEMBER 31, 2007		
Assessment Date	Assessment Type	Assessment Amount
05-02-11	Tax per audit.	\$219,040.00
05-02-11	Penalty for failure to file accurate return. I.R.C. § 6662.	\$14,094.80
05-07-12	Penalty for failure to pay tax per audit. I.R.C. § 6651(a)(2)-(3).	\$8,104.51
05-13-13	Penalty for failure to pay tax per audit. I.R.C. § 6651(a)(2)-(3).	\$8,456.88
05-05-14	Penalty for failure to pay tax per audit. I.R.C. § 6651(a)(2)-(3).	\$1,057.11

5. Pursuant to 26 U.S.C. §§ 6201, 6203, a delegate of the Secretary of the Treasury assessed DAVID TORGERSON with the liabilities in the following table on account of which a balance remains as of April 30, 2018, including interest and other statutory additions, totaling \$15,551.82:

INCOME TAX FOR YEAR ENDING DECEMBER 31, 2008		
Assessment Date	Assessment Type	Assessment Amount
05-02-11	Tax per audit.	\$57,781.00
05-02-11	Penalty for failure to file accurate return. I.R.C. § 6662.	\$1,599.60
05-07-12	Penalty for failure to pay tax per audit. I.R.C. § 6651(a)(2)-(3).	\$919.77
05-13-13	Penalty for failure to pay tax per audit. I.R.C. § 6651(a)(2)-(3).	\$959.76
05-05-14	Penalty for failure to pay tax per audit. I.R.C. § 6651(a)(2)-(3).	\$119.97

6. Pursuant to 26 U.S.C. §§ 6201, 6203, a delegate of the Secretary of the Treasury assessed DAVID TORGERSON with the liabilities in the following table on account of which a balance remains as of April 30, 2018, including interest and other statutory additions, totaling \$39,272.61:

INCOME TAX FOR YEAR ENDING DECEMBER 31, 2009		
Assessment Date	Assessment Type	Assessment Amount
05-02-11	Tax per audit.	\$143,914.00
05-02-11	Penalty for failure to file accurate return. I.R.C. § 6662.	\$3,858.80
05-07-12	Penalty for failure to pay tax per audit. I.R.C. § 6651(a)(2)-(3).	\$2,218.81
05-13-13	Penalty for failure to pay tax per audit. I.R.C. § 6651(a)(2)-(3).	\$2,315.28

INCOME TAX FOR YEAR ENDING DECEMBER 31, 2009		
Assessment Date	Assessment Type	Assessment Amount
05-05-14	Penalty for failure to pay tax per audit. I.R.C. § 6651(a)(2)-(3).	\$289.41

7. Pursuant to 26 U.S.C. §§ 6201, 6203, a delegate of the Secretary of the Treasury assessed DAVID TORGERSON with the liabilities in the following table on account of which a balance remains as of April 30, 2018, including interest and other statutory additions, totaling \$15,798.20:

INCOME TAX FOR YEAR ENDING DECEMBER 31, 2010		
Assessment Date	Assessment Type	Assessment Amount
06-20-11	Tax per return.	\$87,698.24
05-07-12	Penalty for failure to pay tax per return. I.R.C. § 6651(a)(2)-(3).	\$957.70
05-13-13	Penalty for failure to pay tax per return. I.R.C. § 6651(a)(2)-(3).	\$1,310.53
05-05-14	Penalty for failure to pay tax per return. I.R.C. § 6651(a)(2)-(3).	\$252.03

8. Pursuant to 26 U.S.C. §§ 6201, 6203, a delegate of the Secretary of the Treasury assessed DAVID TORGERSON with the liabilities in the following table on account of which a balance remains as of April 30, 2018, including interest and other statutory additions, totaling \$6,899.27:

INCOME TAX FOR YEAR ENDING DECEMBER 31, 2013		
Assessment Date	Assessment Type	Assessment Amount
07-07-14	Tax per return.	\$69,912.93

INCOME TAX FOR YEAR ENDING DECEMBER 31, 2013		
Assessment Date	Assessment Type	Assessment Amount
05-11-15	Penalty for failure to pay tax per return. I.R.C. § 6651(a)(2)-(3).	\$463.30

9. As to each assessment itemized above, a delegate of the Secretary of the Treasury gave DAVID TORGERSON a notice and demand for payment in accord with 26 U.S.C. § 6303.

10. DAVID TORGERSON remains indebted to the United States for the federal tax liabilities itemized above in the amount of \$866,851.72, plus interest and other statutory additions accruing on and after May 1, 2018:

Tax Type	Year	Balance
Income	2005	\$661,532.10
Income	2007	\$127,797.72
Income	2008	\$15,551.82
Income	2009	\$39,272.61
Income	2010	\$15,798.20
Income	2013	\$6,899.27
	Total	\$866,851.72

11. Pursuant to 26 U.S.C. §§ 7402, the United States is entitled to a judgment finding DAVID TORGERSON liable for the debts itemized above, plus interest and other statutory additions accruing on and after May 1, 2018.

COUNT II: Lien Enforcement

12. DAVID TORGERSON owns shares of stock in Cardlytics, Inc. (hereinafter "Cardlytics Stock").

13. Pursuant to 26 U.S.C. §§ 6321-22, a lien in favor of the United States arose on the date of the above-described assessments upon all property and rights to property belonging to DAVID TORGERSON, including the Cardlytics Stock.

14. Pursuant to 26 U.S.C. §§ 7402-7403, the United States is entitled to enforce its liens against the Cardlytics Stock, by judicial sale of same, with distribution of the proceeds first to the costs of sale, second to the United States as payment for DAVID TORGERSON's outstanding income tax liabilities, and third, the remaining surplus, if any, to MR. TORGERSON.

WHEREFORE, the United States requests judgment as follows:

- A. Finding that DAVID TORGERSON is liable to the United States for internal revenue taxes, penalties, and statutory additions in the amount of \$866,851.72, plus statutory additions accruing on and after May 1, 2018, including interest under 26 U.S.C. §§ 6606, 6621, 6622, and 28 U.S.C. § 1961(c).
- B. Finding that the United States has a valid and subsisting tax lien on all property and rights to property belonging to DAVID TORGERSON to the extent of his tax liabilities to the United States, including the Cardlytics Stock.
- C. Ordering that the United States' lien on the Cardlytics Stock be enforced by judicial sale of same, with distribution of the proceeds first to the costs of

sale, second to the United States as payment for DAVID TORGERSON's outstanding income tax liabilities, and third, the remaining surplus, if any, to MR. TORGERSON.

- D. Awarding the United States the costs it incurs for this action.
- E. Awarding the United States such other relief as this Court deems just and proper.

Thursday, July 5, 2018

Local Counsel:

BENJAMIN C. GLASSMAN
United States Attorney

Respectfully submitted,

RICHARD E. ZUCKERMAN
Principal Deputy Assistant Atty. General
U.S. Dept. of Justice, Tax Division

/s/ L. Steven Schifano

L. Steven Schifano
Trial Attorney, Tax Division
U.S. Department of Justice
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Counsel for the United States

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

United States

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Steven Schifano, 555 4th Street N.W., Washington DC 20001, (202) 307-6575.

DEFENDANTS

David E. Torgerson

County of Residence of First Listed Defendant **Delaware**
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

26 U.S.C. § 7401

Brief description of cause:

Action to collect federal tax liabilities.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

07/05/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/ L. Steven Schifano

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.